

Medlar Electric, Inc. and Bohrer Reagan Co. Joint Employers and Teamsters Local Union No. 429, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Petitioner. Case 4-RC-20249

July 18, 2002

DECISION ON REVIEW AND DIRECTION

BY CHAIRMAN HURTGEN AND MEMBERS COWEN
AND BARTLETT

On August 23, 2001, the Acting Regional Director for Region 4 issued a Decision and Direction of Election in the above-entitled proceeding, in which he found the petitioned-for unit of the Joint Employer's full-time and part-time truckdrivers to be an appropriate unit for collective bargaining. The Joint Employers contended that three warehouse employees and the heavy equipment operator also should be included in the unit because they were dual-function employees who regularly performed unit work. The Acting Regional Director included Gary Adams, a warehouse employee who spends approximately 30 to 40 percent of his time driving a pickup truck to transport supplies or equipment. He excluded three others: Bruce Brooks, the heavy equipment operator, and warehouse employees Eric Sanders and Thomas Luckenbill whose driving duties constitute only 10 to 15 percent of their worktime.

Thereafter, the Joint Employers filed a timely request for review of the Acting Regional Director's decision, contending that he erred in excluding Brooks, Sanders, and Luckenbill. On September 19, 2001, the Board denied the Joint Employers' request for review, but amended the decision to permit Brooks to vote under challenge. The election was held September 20, 2001. The tally was three for and two against the Petitioner, with three determinative challenged ballots.¹

On October 11, 2001, the Regional Director issued a supplemental decision on challenged ballots and certification of representative in which she sustained the challenges to all three ballots. In so doing, the Regional Director affirmed the earlier decision to exclude Brooks, and noted that Sanders and Luckenbill previously had been found to be ineligible to vote and that the Board had denied review of the determination. She, therefore, certified the Petitioner as the exclusive representative of the Joint Employers' truckdrivers.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Joint Employers filed a timely request for review of the Regional Director's supplemental decision, contend-

ing that the Regional Director erred in finding that Bruce Brooks is not an eligible voter. The Petitioner filed a statement in opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We grant the Joint Employers' request for review of the Regional Director's supplemental decision. Having carefully considered the entire record, we find, for the reasons set forth below, that Bruce Brooks is a dual-function employee who has a sufficient interest in the unit's conditions of employment to be included in the unit.

Medlar Electric performs electrical construction work primarily on public sector jobs, such as schools and treatment plants. Bohrer Reagan performs mechanical construction work, including the installation of air conditioning and heating systems. The Joint Employers employ approximately 280 workers, including 160 electricians represented by the International Brotherhood of Electrical Workers. They employ four full-time truckdrivers who primarily use 8 to 10 trucks to transport equipment and materials between the Joint Employers' warehouse and various jobsites.² Medlar's two full-time drivers transport generators, lights, and conduits in large stake and small stake body trucks (20- and 12-foot beds respectively). Bohrer's two full-time drivers transport materials and equipment, such as ductwork or air conditioning units, in large stake body trucks or in closed box trucks, which have 21-foot beds. The drivers load their trucks at the warehouse each morning and make four to five deliveries per day. When they have completed their deliveries, they return to the warehouse where they may perform other duties, such as cleaning the warehouse or assisting warehouse employees in moving materials.³

Bruce Brooks operates all of the Joint Employers' heavy equipment (including the backhoe and bobcat), and performs most of the trenching work and any of the excavation work needed to be done. Brooks also holds a commercial driver's license that allows him to use the dump truck to tow necessary equipment to the appropriate jobsite. He uses the dump truck to load and unload dirt and stone, and he drives a pickup truck to transport material necessary for the concrete work. Brooks also transports or "hauls" some tools to various jobsites, when the weight limit is over what light trailers will pull (e.g.,

² The Joint Employers have 100 vehicles, the majority of which are pickup trucks used by the electricians.

³ In addition, warehouse employee Gary Adams spends 30 to 40 percent of his worktime driving. He generally drives a pickup truck every day to transport supplies or equipment from local supply stores. Also, Adams may deliver tools directly to local jobsites and tow job trailers and large equipment and/or hydraulic lifts to jobsites.

¹ The Petitioner challenged the ballots of Sanders and Luckenbill.

30,000–40,000 lb. lifts). According to the Joint Employers' president and owner, Kenneth Field, Brooks typically spends approximately 25 to 30 percent of his time in the dump truck and most of his remaining worktime doing construction work.⁴

Based on the foregoing, we conclude, contrary to the Regional Director, that Brooks, like Adams, is a dual-function employee who regularly performs unit work for sufficient periods of time to demonstrate that he has a substantial interest in the unit's wages, hours, and conditions of employment. See *Continental Cablevision of St. Louis County, Inc.*, 298 NLRB 973 (1990); *Berea Publishing Co.*, 140 NLRB 516, 519 (1963). Thus, like the unit truckdrivers who transport equipment and materials between the warehouse and various jobsites, Brooks performs similar unit work when he tows or hauls tools and

equipment to jobsites to be used both in his construction excavation work and by the Joint Employers' other employees in their electrical and mechanical construction work. In light of the fact that Brooks performs such unit work at least 25 to 30 percent of his time, we find that he, like dual-function driver Adams, regularly performs unit work for a sufficient period of time to demonstrate that he has a substantial interest in the unit's wages, hours, and conditions of employment.

Accordingly, we reverse the Regional Director and overrule the challenge to the ballot of Bruce Brooks. We shall remand this case to the Region for the purpose of opening and counting Brooks' ballot, preparing a revised tally of ballots, and issuing the appropriate certification.

DIRECTION

It is directed that the Regional Director for Region 4 shall, within 14 days from the date of the Decision and Direction, open and count the ballot of Bruce Brooks. The Regional Director then shall serve on the parties a revised tally of ballots, and issue the appropriate certification.

⁴ In the affidavit submitted by the Joint Employers in the challenged ballot proceeding, Brooks states that he spends 40 to 45 percent of his time driving. For purposes of this decision, we need not resolve this discrepancy.

The Regional Director, in excluding Brooks, noted that Brooks operated a dump truck, unlike the other drivers who hauled materials and equipment. However, the unit involved herein is "**all** full-time and part-time truck drivers." (Emphasis added.)